


SO ORDERED.

SIGNED this 17 day of November, 2021.




Joseph N. Callaway
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION**

IN RE:)	
)	
RUBEN MARIO PENA, JR.,)	CHAPTER 13
)	CASE NO. 18-04935-5-JNC
)	
DEBTOR.)	

**CONSENT ORDER GRANTING MOTION FOR
RELIEF FROM THE AUTOMATIC STAY**

THIS CAUSE comes on before the Court upon the Motion For Relief From The Automatic Stay (the "Motion") filed herein on behalf of Performance Finance ("Performance"), a division of Evergreen Bank Group. The Debtor desires to surrender the Vehicle to Performance and the parties have agreed to resolve the Motion on the terms set forth herein as evidenced by their respective signatures set forth below. After having reviewed the Motion and the record in this case, the Court makes the following:

FINDINGS OF FACT

1. The Debtor commenced this case by the filing of a Chapter 13 petition on October 9, 2018.
2. On or about October 21, 2016, the Debtor borrowed the sum of \$15,067.01 pursuant to the terms of that certain Promissory Note, Disclosure And Security Agreement of even date (the "Contract").
3. Under the terms of the Contract, Performance was granted a senior security interest in that certain 2016 Indian Chief Dark Horse Motorcycle, VIN 56KCCDAA6G3340422 (the "Vehicle"), which it duly perfected.

4. As of October 18, 2021, the net payoff amount due under the Contract was \$5,895.17. At the same time, the base NADA wholesale value of the Vehicle was approximately \$9,385.00.

5. The Debtor desires to surrender the Vehicle to Performance and Performance seeks relief from stay in order to obtain possession of and dispose of the Vehicle.

Based upon the above facts, this Court finds that there is cause under 11 U.S. C. §362(d)(1) to grant the Motion.

IT IS THEREFORE HEREBY ORDERED as follows:

1. That the automatic stay of 11 U.S.C. §362 is lifted and modified to permit Performance to obtain possession of and sell the Vehicle pursuant to applicable law.

2. That the 14-day stay provided for in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is hereby waived and the lifting of the automatic stay pursuant to the terms of this Consent Order shall be effective immediately.

3. That the Debtor is ordered to release the Vehicle to Performance or advise it of the location of the Vehicle and the name, address, and telephone number of any third party in possession of the Vehicle.

4. That Performance is hereby permitted 120 days from entry of this Consent Order to file a general unsecured (deficiency claim) for any amounts remaining due under the Contract after sale of the Vehicle.

5. That time is of the essence as to each and all of the provisions of this Consent Order.

6. That this Court retains jurisdiction over this matter, the parties hereto, and the subject matter hereof, to the extent permitted under applicable law, for the entry of such other and further orders as are either necessary or appropriate to accomplish the foregoing.

SIGNATURES ON NEXT PAGE

CONSENTED TO AND ACCEPTED:

KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P.A.

By: /s/ Pamela P. Keenan

Pamela P. Keenan

N.C. State Bar No. 20328

Attorneys for Performance Finance

P. O. Box 19766

Raleigh, NC 27619-9766

Telephone: (919) 848-0420

Facsimile: (919) 848-8755

Email: pkeenan@kirschlaw.com

SMITH DICKEY DEMPSTER CARPENTER & HARRIS

By: /s/ Mark M. Harris

Mark M. Harris

N.C. State Bar No. 31573

Attorney for Debtor

309 Person St.

Fayetteville, NC 28302

Telephone: (910) 484-8195

Facsimile: (910) 484-4335

Email: bksmithdickkey@gmail.com

JOSEPH A. BLEDSOE, III

By: /s/ Joseph A. Bledsoe, III

Joseph A. Bledsoe, III

N.C. State Bar No. 19817

Chapter 13 Trustee

PO Box 1618

New Bern, NC 28563

Telephone: (252) 633-0074

Email: chapter13@bledsoe13.com

END OF DOCUMENT